

### REMARKS

Withdrawal of the restriction requirement is respectfully requested. Applicants traverse the restriction requirement because the restriction requirement does not meet the requirements of 35 U.S.C. § 121 and search and examination of the entire application would not be a serious burden on the Examiner.

The Examiner has identified two sets of claims, claims 1-28 (Group I) and claims 29-38 (Group II), in the restriction requirement. Both sets of claims are related to memory devices and methods of forming them. Both sets of claims are not independent and distinct from each other as required by 35 U.S.C. § 121.

The Examiner states that the two groups of claims are distinct from each other, because the device as claimed (Group II) can be made by a materially different device than the method as claimed (Group I). More specifically, the Examiner asserts, "Group II can be fabricated by bonding of a plurality of discrete elements over the first interfacial layer instead of forming." Applicants disagree with the Examiner's assertions for two main reasons:

1. Independent claim 17 of Group I includes the feature "forming a plurality of discrete elements ..." Applicants believe the Examiner is contending that the restriction is proper because "forming a plurality of discrete elements" does not include bonding discrete elements. This is incorrect. Forming includes any method by which the plurality of discrete elements can be formed. Hence, forming includes bonding and hence, bonding is not independent and distinct from forming. Thus, Applicants fail to see how a materially different process is used. The example given by the Examiner is not correct and thus the Examiner has failed to show how the product as claimed can be made by a materially different process or how the process as claimed can be used to make a materially different product.

2. Independent claim 29 of Group II does not include the feature of "a plurality of discrete elements over the first interfacial layer." Instead claim 29 includes, "a plurality of discrete elements over the first floating gate."

In addition, the search and examination of all claims would not be a serious burden on the Examiner. A search of the device claims would involve searching for any method of forming discrete elements, which are included in the method claims. The Examiner will inherently search the subject matter included within the structure claims when he or she

searches the method claims. Accordingly, examination of all the claims is not a serious search burden on the Examiner. Therefore, the Examiner must examine the entire application on the merits even if it includes claims to independent and distinct inventions. M.P.E.P. § 803.

If the restriction requirement is not withdrawn, Applicants elect to prosecute the invention of claims 1-28 (Group I). Please contact the Applicants' practitioner below if there are any issues regarding this communication or the current Application.

If Applicant has overlooked any additional fees, or if any overpayment has been made, the Commissioner is hereby authorized to credit or debit Deposit Account 503079, Freescale Semiconductor, Inc.

SEND CORRESPONDENCE TO:

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Respectfully submitted,

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